

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Richard Rubio and Eileen Rubio,

Case No. 09-75163-ast

Debtor.

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**LIMITED OBJECTION OF  
HSBC REALTY CREDIT CORPORATION (USA)  
TO NOTICE OF PRESENTMENT OF AN  
ORDER TO APPROVE STIPULATION OF SETTLEMENT**

HSBC Realty Credit Corporation (USA) (“HSBC”), by its counsel, Anne M. Peterson, files this limited objection (“Objection”) to the Notice of Presentment of an Order to Approve Stipulation of Settlement dated August 6, 2009, Affirmation in Support of Peter Corey, Esq. dated of even date therewith and the proposed order (collectively, “Stipulation”)(Docket No. 13). In support of the Objection, HSBC respectfully represents as follows:

1. On July 13, 2009, Richard Rubio and Eileen Rubio (collectively, “Debtor”) filed their voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. On August 6, 2009, the Debtor filed the Stipulation, but neither the Debtor nor the counterparty to the Stipulation, Sam Domb (“Domb”), provided HSBC any notice of the proposed settlement which includes the assumption by the Debtor or others of HSBC’s loans (described in the Stipulation) and releases of Domb’s guarantee obligations to HSBC in connection with the loans.
3. As of August 21, 2009, the principal amount due HSBC on the loans to Westhampton Beach Holding LLC (“Borrower” or “Mortgagor”) is \$5,729,055.16, plus interest, costs, charges, fees and expenses, as applicable (“Indebtedness”).

4. The HSBC Indebtedness is secured by, among other things, guarantees from Domb dated March 8, 2005 and July 19, 2005 (collectively, "Guarantees") and by mortgages given by Mortgagor to HSBC, including by that certain Consolidation, Modification and Extension Agreement dated December 19, 2005 and recorded in the Suffolk County Clerk Records' Office on April 10, 2006 at Liber M00021275, page 511, which mortgage constitutes a lien on the property located at 112 Old Riverhead Road, Westhampton Beach, NY 11978 ("Mortgage"). Paragraph 30 of the Mortgage provides, in pertinent part:

The Mortgagor hereby covenants and agrees that the commitment issued to Mortgagor by the Mortgagee for the Loan on the Mortgaged Property was predicated on the continuation of the present ownership and management of the said premises, the same being a material inducement to the Mortgagee in the granting of the Loan and the Mortgagor agrees that the Mortgagee shall have the right and is hereby granted the right to call for the immediate payment of the entire mortgage indebtedness, together with interest thereon and together with all other sums secured hereby, in the event that the Mortgaged Property shall cease, without the Mortgagee's prior written consent, to be owned and managed by the present owners, and/or ... the Mortgagor is directly or indirectly transferred, conveyed, assigned, ... whether by deed, assignment, lease, transfer of stocks, ... transfer of any partnership or limited liability company member interest ..., without the mortgagee's prior written consent.

5. Neither the Debtor nor Domb have requested the consent required under Paragraph 30 of the Mortgage to enter into the Stipulation, transfer Domb's ownership interest therein or assume the Indebtedness or release Domb from his Guarantees. HSBC has no present intention of providing such required consent. Further, HSBC is unwilling presently to release Domb's Guarantees and has been given no information to analyze or approve any such action. Therefore, HSBC objects to the Court's entry of an order approving the Stipulation.

**WHEREFORE**, for all of the foregoing reasons, HSBC respectfully requests that the Court refrain from entering an order approving the Stipulation unless and until HSBC has been given the information necessary to analyze whether it is able to consent to the Stipulation as

it relates to the Indebtedness, and provide said consent, if it deems appropriate, and for such further and other relief as the Court deems appropriate.

Dated: September 4, 2009

HSBC REALTY CREDIT CORPORATION (USA)

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